

**DOCKET NO. 2020-263-E**

Cherokee County Cogeneration Partners, LLC (“Cherokee”), pursuant to Rule 103-833(C) of the Rules of Practice and Procedure of the Public Service Commission of South Carolina (“Commission”), hereby serve Duke Energy Carolinas, LLC and Duke Energy Progress, LLC with the following Second Set of Interrogatories and Requests for Production to be answered under oath on or before twenty (20) days from the date of service.

ELECTRONICALLY FILED - 2021 June 29 10:03 AM - SCPSC - Docket # 2020-263-E - Page 1 of 12

## **INSTRUCTIONS**

1. Please produce the requested documents as they are kept in the usual course of business or to organize and label them to correspond with the categories in the Request.

Documents attached to each other should not be separated.

2. In producing Documents, furnish all documents known or available to you, regardless of whether such documents are possessed directly by you or your agents, employees, representatives, investigators, or by your attorneys. All requests for Documents specifically request documents of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC.

3. If any document otherwise responsive to any Request was, but is no longer, in your possession, subject to your control or in existence, identify each document by listing its author(s) and addressee(s), date, subject matter, whether the document(s) or copies are still in existence (and if so, their locations and the custodians), as well as whether the document is missing or lost, has been destroyed, has been transferred voluntarily to others, or has been otherwise disposed of. In each instance, explain the circumstances surrounding such disposition and identify the person(s) directing or authorizing its destruction or transfer, and the date(s) of such direction or authorization.

4. If a privilege or objection as to any Request is claimed, identify with specificity the matter as to which the privilege or objection is claimed, the nature of the privilege or objection, and the legal and factual basis for each such claim, and provide a complete description of the information or document being withheld.

5. Each Request shall be reproduced at the beginning of the response thereto.

6. Please provide copies of the information responsive to each Request in native electronic working format with all data and formulas intact.

7. Please provide responses to the following data requests electronically. To the extent this is impracticable, the responses, including any responsive Documents, should be provided at the offices of Adams and Reese LLP, 1501 Main Street, 5th Floor, Columbia, South Carolina 29201, or some mutually convenient location otherwise agreed to by the parties.

### **DEFINITIONS**

1. **“2016 Avoided Cost Proceeding”** means the proceeding described by Commission Order No. 2016-349 in Docket No. 1995-1192-E.
2. **“2019 Avoided Cost Proceeding”** means the Commission proceedings in Docket Nos. 2019-185-E and 2019-186-E.
3. **“2018 Proposal”** means the proposed avoided cost rates forwarded to Cherokee by letter dated October 31, 2108.
4. **“2021 Proposal”** means the term sheet proposal dated February 10, 2021 and provided by DEC to Cherokee.
5. **“Back-up information”** means all inputs and assumptions underlying DEC’s production cost modeling for the 2018 Proposal or the 2021 Proposal, including but not limited to:
  - a. Load and energy forecasts and when new resources are assumed in the forecast;
  - b. Resource mix;
  - c. Capital cost and annual fixed operating cost assumed for a peaking facility,
 including:
  - i. Cost of capital assumed for the new build resource; and
  - ii. Discount rate assumed to levelize cash flows over the 5-year or 10-year term of the offer.

- d. Resource Unit characteristics, including
  - i. Variable Operations and Maintenance Cost (VOC)
  - ii. Environmental emissions costs
  - iii. Reagent costs
  - iv. Fuel and fuel transport costs,
  - v. Heat rates or heat rate curves assumed
  - vi. Maintenance Costs; and
  - vii. Other variable dispatch costs.
- 6. “**Cherokee Facility**” means the natural gas fueled combined cycle cogeneration facility located in Gaffney, South Carolina and known as Cherokee.
- 7. “**Commission**” means the Public Service Commission of South Carolina.
- 8. “**Communication**” means the transmittal of information in the form of facts, ideas, Documents, inquiries, or otherwise, including every discussion, conversation, conference, or telephone call.
- 9. “**You**” and “**your**” means Duke Energy Carolinas, LLC, Duke Energy Progress, LLC Duke Energy Carolinas, LLC’s witnesses and Duke Energy Progress LLC’s witnesses in this proceeding.
- 10. The term “**document**” is to be construed as broadly as permissible under Rule 34 of the South Carolina Rules of Civil Procedure and includes, but is not limited to, any printed, typewritten, handwritten or otherwise recorded information of whatever character, including, but not limited to, letters, memoranda, notes, diaries, reports, records, calendars, charts, audio and/or video tapes or discs, and photographs; computer programs or disks; electronic media records, however recorded and maintained, including, but not limited to, electronic mail, voicemail

messages, digital photographs and electronically scanned records of any type; recorded observations, statements, conversations or formal affidavits. Any carbon or photocopy of any such materials upon which notations have been made and all drafts are also included.

11. The terms “**related to**” and “**relating to**” or any variation thereof shall be construed to include refer to, summarize, reflect, constitute, contain, embody, mention, show, comprise, evidence, discuss, describe, comment on, concerning, regarding, eluding to, pertaining to, probative of, in connection with, dealing with, in respect of, about, involved, identifying or proving.

12. “**Identify**,” when referring to a Person, means to give, to the extent known, the Person’s full name, present or last known address, and when referring to a natural Person, additionally, the present or last known place of employment.

13. “**Identify**,” when referring to Documents, means to give, to the extent known, the (i) type of Document; (ii) general subject matter; (iii) date of the Document; and (iv) authors addressees and recipients.

14. “**Identify**,” when referring to an oral Communication, means to give, to the extent known, the identity of the speaker and of each Person who was present when the Communication was spoken, and the substance, date, and place of such Communication.

### **INTERROGATORIES**

1. Do DEP and/or DEC contend that a utility has the right to unilaterally revoke or nullify a QF’s LEO?

2. Do DEP and/or DEC contend that a utility can impose a time deadline on an offer made by a QF pursuant to a LEO? If so, under what circumstances do DEP and/or DEC believe such a time deadline is appropriate and supportable under PURPA or FERC’s or the PSC’s PURPA implementing regulations?

3. Do DEP and/or DEC contend that the Cherokee Facility does not satisfy the definition of Network Resource under section 1.37 of the Joint OATT of DEP and DEC? If so, please identify what part of the definition the Cherokee Facility does not satisfy.

4. Please confirm that DEP can designate resources that are (i) located within the DEC service territory and (ii) that satisfy the definition of Network Resources under the Joint OATT.

- (a) if the answer is no, please state what Joint OATT policy, rule or other requirement does not allow such designation.
- (b) if the answer is yes, please state whether DEP would pay any transmission related charge, other than its Network transmission service charges, for the delivery of power from a Network Resource located within the DEC service territory.

5. Please state whether Duke prohibits or otherwise does not allow DEP to designate a QF located in DEC's service territory as a Network Resource, for delivery of power from such facility to DEP. If so, please identify any Joint OATT, DEP or DEC FERC jurisdictional agreement or policy or rule or any PURPA provision, or FERC or PSC case implementing PURPA that would prevent such a designation of a QF in DEC's service territory for delivery of power to DEP pursuant to DEP's network transmission arrangements.

6. Reference: Direct Testimony of Glen A. Snider, p. 11. "For QFs larger than 2 MW not eligible for the Commission-approved standard rates and terms, such as Cherokee, the Companies followed a standardized process for negotiating a PPA with a QF that used a consistent methodology to update avoided costs monthly."

- (a) Please identify any authority (including but not limited to a statute, regulation, order, or directive) directing DEC to update avoided costs on a monthly basis for the purposes of negotiating PPAs with large QFs. If not governed by any such authority, please confirm that the decision to update avoided costs monthly was taken by DEC alone without guidance from any regulatory body.
- (b) Please comment on whether the policy to update avoided costs monthly refers both to avoided energy costs and avoided capacity costs, or only avoided energy costs. Please explain.

7. Reference: Direct Testimony of Glen Snider, p. 12. "The avoided cost pricing that is tendered to the QF remains valid for a reasonable period of time to allow the QF and the utility to work to finalize the PPA (normally 60 days)."

- (a) Please explain the basis for a 60-day time limit on avoided cost pricing offers.

- (b) Identify all contracts with large QFs that have been negotiated and executed by DEC and DEP in a period of 60 days or less during the period 2015 to the present.
- (c) Please provide any citation to PURPA or any implementing regulation; a FERC case, South Carolina PSC case, or any other order, regulation or regulatory guidance that supports setting a 60 day or any other time period on the duration of a QF's LEO.

8. Reference: Direct Testimony of Glen Snider, p. 13. "Since the Companies' customers ultimately pay the avoided cost rates that the Companies pay to QFs, it is important that the date on which the LEO is recognized is reasonably aligned with the date on which customers begin receiving (and paying for) the QF power."

- (a) Please cite any orders, regulations, or other regulatory guidance to support the alignment of the LEO date with the delivery of contracted QF power.
- (b) Please explain how a QF can displace utility-built capacity if it is not allowed to contract until it is ready to make deliveries.

9. Reference: Direct Testimony of Glen Snider, p. 13. "Since the Companies' customers ultimately pay the avoided cost rates that the Companies pay to QFs, it is important that the date on which the LEO is recognized is reasonably aligned with the date on which customers begin receiving (and paying for) the QF power."

For all power purchase agreements entered into by DEC and DEP during 2015 to the present, identify each contract execution date and the date of first deliveries.

10. Reference: DEC Response to Cherokee's First Interrogatories, IR 1. Worksheet "Profile Opt B Hrs" in the file titled "rate calc\_Cherokee Oct 2018 quote\_v0.xlsx."

- (a) Please explain how Duke created the energy generation profile in the worksheet titled "Profile Opt B Hrs."
- (b) Please confirm if the data in the worksheet *General Inputs SC DEC* cells C54 to E82 represent the time-weighted results of Duke's Prosym modeling.
- (c) Please provide the energy price in each of the 8760 hours (or 8784 hours in leap years) in each year used to create the data table in worksheet *General Inputs SC DEC* cells C54 to E82.

11. Reference: DEC Response to Cherokee's First Interrogatories, IR 1, 5.

Please explain how the six output files in the base case of the production cost modeling relate to the avoided production costs from 2018 through 2041 in the "General Inputs SC DEC"

worksheet in “rate calc\_Cherokee Oct 2018 quote\_v0.xlsx.” For reference, the titles of the six output files are as follows: 1) “AC-9-2018-Base-UnCTGasLim.abp.Confidential.txt”; 2) “AC-9-2018-Base-UnCTGasLim.CMC.Confidential.txt”; 3) “AC-9-2018-Base-UnCTGasLim.hmg.Confidential.txt”; 4) “AC-9-2018-Base-UnCTGasLim.mn. Confidential.txt”; 5) “AC-9-2018-Base-UnCTGasLim.mrg.Confidential.txt”; 6) “AC-9-2018-Base-UnCTGasLim.yr. Confidential.txt.”

12. Reference: DEC Response to Cherokee’s First Interrogatories, IR 3. “The Cherokee contract was assumed to expire on December 31, 2020, so was not involved in the production cost modeling used for establishing the 2021 – 2025 avoided costs used in the 2018 Proposal pricing.”

- (a) Please also confirm that DEC’s modeling that supported its 2018 IRP assumed that Cherokee would be unavailable to DEC after 12/31/2020.
- (b) When DEC prepared its 2018 IRP, did DEC seek any input from Cherokee regarding its business plans to put its energy to DEC under PURPA in the period beyond 12/31/2020? If not, why not?

13. Reference: DEC Response to Cherokee’s First Interrogatories, IR 5.

Duke’s 2018 IRP indicated that Cliffside 5 will retire in 2032; however, Duke’s 2018 offer was based on thermal inputs in “Thermal.DAT.Confidential.txt” that slate Cliffside 5 for retirement in 2042. What is the reason for this discrepancy?

14. Reference: DEC Response to Cherokee’s First Interrogatories, IR 5.

- (a) For the production cost model inputs in the base case of the September 2018 offer provided in response to Interrogatory 5, please specify the changes that were made in the DEC change case.
- (b) Please specify which input file shows the increment of QF capacity (or energy) that was added in the change case. Please also specify the entries in the input file that show the characteristics of the added QF capacity (or energy).

15. Reference: DEC Response to Cherokee’s First Interrogatories, IR 16.

Please provide production cost model inputs and outputs used in the 2021 offer, specifically the inputs and outputs for the base and change cases.

16. Reference: Direct Testimony of Kendal C. Bowman, p. 4. “In particular, I first discuss how rates paid to qualifying facilities (‘QFs’) must be limited to avoided costs to be lawful, and that it is unlawful under PURPA to pay QFs above avoided costs.”



Witness Bowman's testimony establishes that FERC and states cannot establish rules requiring payments in excess of a QF's avoided cost under PURPA; however, Witness Bowman's testimony provides no citations for the contention that paying QF's above-avoided cost rates under a negotiated arrangement or otherwise are "unlawful." Please provide support for such statement, if any.

17. Reference: Direct Testimony of Kendal C. Bowman, p. 20. "*where the utility refuses to enter into a contract*, the QF can bind the utility to purchase power from the QF by establishing a non-contractual, but still binding, LEO".... "The Commission tasked with setting avoided cost rates under PURPA is responsible for determining whether and when a LEO is created, and the procedures for obtaining approval of such an obligation by the QF. *Where a QF demonstrates that the utility has effectively refused to tender an executable PPA*, the date upon which the QF makes a legally enforceable commitment to sell power to the utility is generally the date that the utility and its customers should become obligated under PURPA to purchase power from the QF." (emphasis supplied).

- (a) Please identify any authority supporting Witness Bowman's contention (italicized above) that a utility's refusal to enter into a contract is a pre-requisite for establishing a LEO.
- (b) Please explain how Witness Bowman's italicized statements square with FERC's requirement that establishment of a LEO turns on the QF's actions, not a utility's actions. (See Bowman Testimony, p. 20, lines 3-4 recognizing the same).

18. Reference: Direct Testimony of Kendal C. Bowman, p. 23. "By rejecting each of the Companies' repeated offers of avoided cost rates and PPAs and making counter offers at rates well above the Companies' avoided costs, Cherokee's claim of an LEO is inconsistent with FERC's regulations and PURPA, which limits the Companies' purchase obligations to rates set based on the utility's avoided costs."

- (a) Please identify any authority supporting Ms. Bowman's contention that the QF and utility must agree on the appropriate avoided cost rate for a LEO to be established.
- (b) Please explain how a requirement that the QF and utility mutually agree to the avoided cost pricing would comport with FERC's goal of the LEO being to "protect the QF's right to sell power to the utility..." (See Bowman Testimony, p. 20.)
- (c) Is it Duke's contention that a large cogeneration QF like Cherokee is not entitled to a LEO absent a signed PPA?
- (d) How might Cherokee have established a LEO, absent Duke's PPA, which contained rates for avoided costs that Cherokee did not believe were appropriate for a variety of reasons, including failure to include a capacity payment?

19. Reference: Direct Testimony of Glen Snider, p. 24. “At the time that Cherokee submitted its September 17, 2018 communication to DEC, DEC’s first avoidable capacity need as identified in its 2018 IRP was projected to arise in 2028.”

- (a) Please provide a project budget and estimated rate base (at the time the project is placed into service) for each of the additions listed below and referenced in DEC's 2018 IRP.
- (b) Please provide the operating characteristics for each of the thermal additions listed below and referenced in DEC's 2018 IRP. Operating characteristics include, but are not limited to, start cost, min up times, min down times, and the average full-load heat rate.

List of additions:

- (1) 402 MW Lincoln Combustion Turbine
- (2) Four 65 MW upgrades to the Bad Creek pumped storage facility
- (3) 22 MW of Combined Heat and Power
- (4) 120 MW of Battery Storage

### **REQUESTS FOR PRODUCTION OF DOCUMENTS**

1. Please provide copies of all DEC and DEP contracts with cogeneration facilities during the period 2015 to present.

2. Please provide a list of dockets and docket numbers for all proceedings in any federal, North Carolina or South Carolina agency, court, or tribunal where DEC or DEP’s PURPA practices were at issue.

3. Please provide copies of any settlement agreements or PPAs entered into as a result of any such PURPA disputes.

4. Reference: Direct Testimony of Kendal C. Bowman, p. 18. “To my knowledge, this is the first time a QF has ever asserted a purported right to sell power to both Companies under PURPA at the same time.”

Please confirm whether, since the Duke Energy Progress/Duke Carolinas merger, any QF has submitted avoided cost requests and/or legally enforceable obligations to both DEC and DEP. If any:

- a. Please provide a list of such QFs
- b. Please provide a list of QFs whose PPAs put power to DEC or DEP at amounts less than the facility’s nameplate capacity.
- c. Please provide any PPAs, settlements, and docket numbers of any related proceedings concerning the (a) and (b) above.

5. Reference: Direct Testimony of Kendal C. Bowman, p. 22. “The Companies

follow a standardized process for negotiating a PPA with large QFs.”

- (a) Please provide the date on which such “standardized process” was established, whether public or non-public.
- (b) Please provide copies of any documentation of DEC’s and/or DEP’s “standardized process.” If there is none, why?
- (c) Please provide any regulatory approvals received for any such “standardized process.” If there is none, why?

6. Reference to: Direct Testimony of Michael Keen, p. 13. “DEP received approximately twenty proposals from nine different suppliers, including Cherokee. Cherokee’s proposal was the least competitive as it was the highest of any bid submitted and almost three times higher than the best bid offered. DEP ultimately awarded contracts to five separate bidders.”

- (a) Please produce copies of all proposals DEP received in the referenced IRP.
- (b) Please produce copies of contracts awarded to the bidders.

7. Please provide copies of all documents identified in response to the Interrogatories propounded above.

**ADAMS AND REESE, LLP**

s/John J. Pringle, Jr.  
 John J. Pringle, Jr.  
 1501 Main Street, 5<sup>th</sup> Floor  
 Columbia, SC 29201  
 Telephone: (803) 254-4190  
 Facsimile: (803) 799-8479  
[jack.pringle@arlaw.com](mailto:jack.pringle@arlaw.com)  
 Attorneys for Cherokee County  
 Cogeneration Partners, LLC

Columbia, South Carolina  
 June 28, 2021

**BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2020-263-E**

Cherokee County Cogeneration Partners, )  
LLC, )

Complainant, )

v. )

Duke Energy Progress, LLC and Duke )  
Energy Carolinas, LLC, )

Respondents. )

**CERTIFICATE OF SERVICE**

This is to certify that I have caused to be served this day **Cherokee County Cogeneration Partners, LLC's Second Discovery Requests to Duke Energy Progress, LLC and Duke Energy Carolinas, LLC** via electronic mail service as follows:

Frank R. Ellerbe III, Esquire Robinson Gray Stepp & Laffitte, LLC <a href="mailto:fellerbe@robinsongray.com">fellerbe@robinsongray.com</a>	Heather Shirley Smith Duke Energy Corporation <a href="mailto:Heather.Smith@duke-energy.com">Heather.Smith@duke-energy.com</a>
E. Brett Breitschwerdt Tracy S. DeMarco McGuireWoods LLP <a href="mailto:bbreitschwerdt@mcguirewoods.com">bbreitschwerdt@mcguirewoods.com</a> <a href="mailto:TDeMarco@mcguirewoods.com">TDeMarco@mcguirewoods.com</a>	Jenny R. Pittman, Esquire Office of Regulatory Staff <a href="mailto:jpittman@ors.sc.gov">jpittman@ors.sc.gov</a>

s/John J. Pringle, Jr.

June 28, 2021  
Columbia, South Carolina